

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

HUNTER MCFARLAND	§	
<i>Plaintiff,</i>	§	
v.	§	
	§	C.A. NO.: 6:21-cv-317
NEW PRIME, INC. and	§	
WILLIAM CHARLES MCCAMMON	§	
<i>Defendants</i>	§	

DEFENDANT NEW PRIME, INC.'S NOTICE OF REMOVAL

Defendant, NEW PRIME, INC. (hereinafter “Prime”) files this Notice of Removal pursuant to 28 U.S.C. § 1441.

I. INTRODUCTION

1. Pursuant to 28 U.S.C. § 1441, *et seq.*, this civil action is removed from the 74th Judicial District Court, in McLennan County, Texas, where this matter was pending under Cause No. 2021-495-3, in a matter styled, *Hunter McFarland v. New Prime, Inc. and William Charles McCammon*.

II. NATURE OF SUIT

2. Plaintiff’s lawsuit arises from an auto collision that occurred on or about April 14, 2019. Plaintiff seeks actual damages, pain and suffering, mental anguish, physical impairment, past and future loss of earnings, past and future disfigurement, and past and future medical expenses. *See Tab 1.*

III. TIMELINESS OF REMOVAL

3. Plaintiff commenced this lawsuit by filing his Original Petition on March 1, 2021. *Id.* Plaintiff’s Petition asserted an amount in controversy of over seventy-five thousand dollars (\$75,000.00). *Id.*

4. Defendant was served with citation on or about March 21, 2021. Thus, pursuant to 28 U.S.C. § 1446(b)(3), this Notice of Removal is timely filed within thirty (30) days after receipt of information from which it may first be ascertained that the case is one which is or has become removable.

IV. BASIS FOR REMOVAL JURISDICTION

5. Removal is proper under 28 U.S.C. §§1441 and 1332(a) because there is a complete diversity of citizenship between Plaintiff and the properly-named Defendants in this lawsuit and the amount in controversy exceeds \$75,000.00. No current properly joined Defendant is a citizen of Texas.

A. Proper Parties

6. Plaintiff is and was at the time of filing of this action, a citizen and resident of McLennan County, Texas.

7. Defendant New Prime, Inc. is now and was at the time of the filing of this action a Missouri corporation with its principal place of business in Missouri.

8. Defendant McCammon is now and was at the time of the filing of this action, a resident and citizen of the State of Mississippi.

B. Amount in Controversy

9. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiff seeks actual damages, pain and suffering, mental anguish, physical impairment, past and future loss of earnings, past and future disfigurement, and past and future medical expenses. Accordingly, it is “facially apparent” that Plaintiff’s claims likely exceed \$75,000.00, which is all that is required to satisfy the amount-in-controversy requirement. *See Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

V. NOTICE IS PROCEDURALLY CORRECT

10. Defendant has attached to this Notice of Removal the documents required by 28 U.S.C. § 1446(a) and Local Rule 81 as follows:

- A: Index of all attachments, including a copy of the state-court docket sheet and a copy of each document filed in the State Court Action;
- B: All executed process in the State Court Action¹; and
- C: List of all counsel, including addresses, telephone numbers and parties represented.

11. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b) because no properly joined and served Defendant is a citizen of Texas, the state in which the action was brought. This action is removable to this Court because this United States District Court and Division embraces the place where the State Court Action was pending. 28 U.S.C. §§124(a)(1), 1441(a).

12. In accordance with 28 U.S.C. § 1446(d), written notice of filing of this Notice of Removal will be given to all parties and to the Clerk of the 357th Judicial District Court in Cameron County, Texas.

DATED: MARCH 31, 2021.

¹ Defendant has requested a copy of all documents filed in the state court lawsuit from the McLennan County District Clerk on March 30, 2021. See **EXHIBIT A** attached hereto. Defendant submitted this request in writing as the McLennan County District Court documents are not available online. In order to fully comply with the Western District local rules, Defendant requested the citations for Defendants, and the state court docket sheet; however, Defendant is still waiting on the documents from the McLennan County District Court. In an abundance of caution and due to the upcoming removal deadline, Defendant filed this Notice of Removal without the documentation, but will supplement as soon as the documents are received by Defendants from the state court.

Respectfully submitted,

GAUNTT, KOEN, BINNEY & KIDD, L.L.P.

/s/ Karl W. Koen _____

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**ATTORNEY FOR DEFENDANT NEW PRIME, INC.
AND WILLIAM CHARLES MCCAMMON**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded to the following counsel of record pursuant to the Texas Rules of Civil Procedure, as indicated below, on this the 31st day of March, 2021.

Via ProDoc and Email

Derrel Luce
Brandon Luce
Luce Law Firm
4600 Bosque Blvd., Suite 2B
Waco, Texas 76710

/s/ Robert J. Collins
ROBERT J. COLLINS



GAUNTT KOEN BINNEY & KIDD, LLP
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FILED
MCLENNAN COUNTY
3/30/2021 10:00 AM
JON R. GIMBLE
DISTRICT CLERK
Rosa Perez

March 29, 2021

Via Pro Doc

Mr. Jon Gimble, Clerk
170th Judicial District
501 Washington Avenue, Suite 221
Waco, Texas 76701

Re: Cause No.: 2021-495-3
Hunter McFarland v. New Prime, Inc. and William Charles McCammon
Our File No.: 7589.221099

Dear Mr. Gimble:

Please allow this correspondence to serve as our firm's request for a complete copy of the Court's file related to the above-referenced matter. Our office is removing this matter to federal court and we need a certified copy of the entire contents in the Court's file including civil case sheet, case summary and docket sheet. Please advise of the fee to complete this request and my office will submit payment promptly.

Should you have any questions, please do not hesitate to contact me or my Paralegal, Melissa Shaffer at (972) 630-4620.

Sincerely,

/s/ Robert J. Collins

Robert J. Collins
robert.collins@gkbklaw.com

/mcs